

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 390

Introduced by Assembly Member Ammiano

February 23, 2009

An act to add Section ~~22394.1 to, and to add Chapter 14.5~~ 23394.1 to, and to add Chapter 19 (commencing with Section ~~25400~~ 26000) to Division 9 of, the Business and Professions Code, to amend Section ~~Sections~~ 7597 and 68152 of the Government Code, to amend Sections 1596.795, 11014.5, 11054, 11357, 11364.5, 11370, 11470, ~~11479, 11488, 11532, 11703, and 11705 of, to add Division 10.3~~ 11488, 11532, 11703, 11705, 118880, 118885, 118890, 118895, 118900, 118905, 118915, 118925, and 118935 of, and to add Division 10.3 (commencing with Section 11720) to, and to repeal Sections 11358, 11359, 11360, ~~11361, and 11485 of, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Section 561 of the Public Utilities Code, to add Part 14.6 (commencing with Section 34001) to Division 2 of the Revenue and Taxation Code, to amend Sections 23222 and 40000.15 of the Vehicle Code, and to amend Section~~ Sections 4138 and 18901.3 of the Welfare and Institutions Code, relating to marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 390, as amended, Ammiano. Marijuana Control, Regulation, and Education Act.

Existing state law provides that every person who possesses, sells, transports, or cultivates marijuana, concentrated cannabis, or derivatives of marijuana, except as authorized by law, is guilty of one or more crimes.

This bill would remove marijuana and its derivatives from existing statutes defining and regulating controlled substances. It would instead ~~legalize~~ *provide for regulation by the Department of Alcoholic Beverages* of the possession, sale, cultivation, and other conduct relating to marijuana and its derivatives, *not including medical marijuana*, by persons 21 years of age and older, ~~except as for specified purposes~~. It would set up a wholesale and retail marijuana sales regulation program *to be administered and enforced by the department, including that imposes special fees to fund drug abuse prevention programs*, as specified, to commence after regulations concerning the program have been issued, ~~and federal law permits possession and sale consistent with the program by the department~~. It would ban local and state assistance in enforcing inconsistent federal and other laws relating to marijuana, and would provide specified infraction penalties for violations of these new marijuana laws and regulations, as specified. *The bill would make existing prohibitions against the smoking of tobacco products in specified areas, including public offices and restaurants, applicable to the smoking of marijuana products.* It would make other conforming changes.

By creating various ~~infractions~~ *crimes* for violations of regulations and laws created by this act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature in enacting this,
- 2 the Marijuana Control, Regulation, and Education Act, to do all
- 3 of the following:
- 4 (a) ~~To legalize~~ *regulate* marijuana and its derivatives *for persons*
- 5 *21 years of age or older.*
- 6 (b) To remove all existing civil and criminal penalties for ~~adults~~
- 7 *persons 21 years of age or older who cultivate, possess, transport,*
- 8 *sell, or use marijuana, without impacting existing laws proscribing*

1 dangerous activities while under the influence of marijuana, or
2 certain conduct that exposes younger persons to marijuana.

3 ~~(e) To ensure that the proper regulatory apparatus for marijuana~~
4 ~~sale and cultivation is ready when permitted by the federal~~
5 ~~government.~~

6 *(c) To regulate marijuana in order to more effectively limit*
7 *access to marijuana by minors.*

8 *(d) To deprive the criminal market of revenue derived from the*
9 *cultivation, smuggling, and sale of marijuana.*

10 *(e) To reduce the violence associated with the criminal market*
11 *for marijuana.*

12 *(f) To prevent the environmental degradation that results from*
13 *the production and eradication of marijuana associated with the*
14 *criminal market.*

15 *(g) To address the overall failure of marijuana prohibition to*
16 *protect the public health and safety.*

17 ~~(d)~~

18 *(h) To raise funds and to discourage substance abuse by the*
19 *imposition of a substantial fee on the legal sale of marijuana, the*
20 *proceeds of which will support drug education and awareness.*

21 ~~(e)~~

22 *(i) To impose a set of regulations and laws concerning marijuana*
23 *comparable to those imposed on alcohol.*

24 ~~(f)~~

25 *(j) To impose substantial fines for violations of the*
26 *noncommercial regulations and laws concerning marijuana, which*
27 *will be applicable until and after commercial marijuana is available*
28 *by virtue of future changes in federal law.*

29 ~~(g)~~

30 *(k) To prevent state and local agencies from supporting any*
31 *prosecution for federal or other crimes relating to marijuana that*
32 *are inconsistent with those provided in this bill.*

33 ~~(h)~~

34 *(l) To exclude medical marijuana from the fees and regulations*
35 *imposed by this act marijuana that is for uses other than smoking*
36 *or ingestion, and to exclude medicinal marijuana from fees under*
37 *these provisions. act.*

38 ~~(i)~~

39 *(m) To encourage the federal government to reconsider its*
40 *policies concerning marijuana, and to change its laws accordingly.*

SEC. 2. Section 23394.1 is added to the Business and Professions Code, to read:

23394.1. An off-sale general license, as provided for in Section 23394, also authorizes the sale, to consumers only and not for resale, of marijuana, concentrated cannabis, or any of its derivatives pursuant to the provisions of Chapter ~~14.5 (commencing with Section 25400)~~ 19 (commencing with Section 26000) of this division.

SEC. 3. ~~Chapter 14.5 (commencing with Section 25400)~~ Chapter 19 (commencing with Section 26000) is added to Division 9 of the Business and Professions Code, to read:

CHAPTER ~~14.5~~ 19. COMMERCIAL MARIJUANA PRODUCTION
AND SALE

26000. (a) *This chapter is an exercise of the police powers of the state for the protection of the safety, welfare, health, peace, and morals of the people of the state, to eliminate the evils of unlicensed and unlawful production, selling, and disposing of marijuana, and to promote temperance in the use and consumption of marijuana. It is hereby declared that the subject matter of this chapter involves in the highest degree the economic, social, and moral well-being and the safety of the state and of all its people. All provisions of this chapter shall be liberally construed for the accomplishment of these purposes.*

(b) *It is the intention of the Legislature in enacting this chapter to ensure the strict, honest, impartial, and uniform administration and enforcement of marijuana laws throughout the state governing the production, sale, disposal, and promotion of temperance in the use and consumption of marijuana.*

(c) *The Department of Alcoholic Beverage Control shall administer and enforce this chapter. The department shall make and prescribe those reasonable rules as may be necessary or proper to carry out the purposes and intent of, and to enable it to exercise the powers and perform the duties conferred upon it by, this chapter.*

~~25400.~~

26010. For purposes of this chapter, “marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant;

1 concentrated cannabis; and every compound, manufacture, salt,
2 derivative, mixture, or preparation of the plant; *or of its seeds or*
3 resin. It does not include the mature stalks of the plant, fiber
4 produced from the stalks, oil or cake made from the seeds of the
5 plant, any other compound, manufacture, salt, derivative, mixture,
6 or preparation of the mature stalks (except the resin extracted
7 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
8 that is incapable of germination. *For purposes of this chapter,*
9 *“marijuana” does not include “medical marijuana” that is*
10 *regulated under Article 2.5 (commencing with Section 11362.7)*
11 *of Chapter 6 of Division 10 of the Health and Safety Code.*

12 ~~25401.~~

13 26020. (a) The department shall license commercial cultivators
14 of marijuana. The fee for the license shall be set at an amount that
15 will reasonably cover ~~to~~ the costs of assuring compliance with the
16 regulations to be issued, but may not exceed five thousand dollars
17 (\$5,000) for an initial application, or two thousand five hundred
18 dollars (\$2,500) per year for each annual renewal.

19 (b) Regulations adopted by the department pursuant to this
20 chapter shall require background checks of applicants be conducted.
21 At the request of the department, the Attorney General or any local
22 agency shall provide summary criminal history information to the
23 department as provided in Sections 11105 and 13300 of the Penal
24 Code.

25 ~~25402.~~

26 26030. The department shall, with consideration for the risks
27 posed by cultivation of a valuable crop with public health
28 implications that is subject to significant fees, issue and enforce
29 regulations concerning commercial cultivators of marijuana that
30 provide for all of the following:

31 (a) Adequate security to reasonably protect against unauthorized
32 access to the marijuana crop at all stages of cultivation, harvesting,
33 drying, processing, packing, and delivery to licensed sales outlets
34 or wholesalers. Each licensee shall be required to provide a detailed
35 crop security plan, along with satisfactory proof of the financial
36 ability of the licensee to provide for that security.

37 (b) Appropriate employment rules, including the rule that a
38 person under 21 years of age may not have access to marijuana
39 during cultivation, storage, drying, *or* packing, or at any other
40 time.

1 (c) Safeguards to assure that a person under 21 years of age may
2 not transport marijuana on behalf of a commercial buyer or
3 commercial seller.

4 (d) Restrictions to ensure that marijuana is not used or consumed
5 on the premises of a commercial cultivator.

6 (e) An inspection and tracking system to reasonably ensure that
7 all marijuana produced by the cultivator that is eventually sold is
8 assessed pursuant to Part 14.6 (commencing with Section 34001)
9 of Division 2 of the Revenue and Taxation Code.

10 (f) Recordkeeping consistent with the regulatory needs of the
11 department.

12 (g) *Ensure that all applicable statutory environmental and*
13 *agricultural requirements are followed in the cultivation of*
14 *marijuana.*

15 ~~25403.~~

16 26040. (a) The department shall license marijuana wholesalers,
17 who shall be allowed to package and prepare marijuana for sale,
18 and who shall be authorized to sell marijuana to licensed sales
19 outlets. The fee for the license shall be set in an amount that will
20 reasonably cover the costs of compliance with the regulations to
21 be issued, but may not exceed five thousand dollars (\$5,000) for
22 an initial application, or two thousand five hundred dollars (\$2,500)
23 per year for each annual renewal.

24 (b) The department shall issue regulations that include a
25 requirement that all applicants for licensure receive background
26 checks. At the request of the department, the Attorney General or
27 any local agency shall provide summary criminal history
28 information to the department as provided in Sections 11105 and
29 13300 of the Penal Code.

30 ~~25404.~~

31 26050. The department shall, with consideration for the risks
32 posed by a valuable commodity with public health implications
33 that is subject to significant fees, issue and enforce regulations
34 concerning the sale ~~and packaging~~, *packaging, and labeling* of
35 marijuana by wholesale licensees. Those regulations shall provide
36 for all of the following:

37 (a) Adequate security to reasonably protect against unauthorized
38 access to marijuana at all stages of the wholesaler's possession of
39 the marijuana, including receiving, processing, packing, storage,
40 and delivery to licensed sales outlets. Each wholesaler shall be

1 required to provide a detailed product security plan, along with
2 satisfactory proof of the financial ability of the licensee to provide
3 for that security.

4 (b) Appropriate employment rules, including the rule that a
5 person under 21 years of age may not have access to marijuana
6 during receiving, processing, packing, storage, and delivery or at
7 any other time.

8 (c) Safeguards to assure that a person under 21 years of age may
9 not transport marijuana on behalf of a commercial buyer or
10 commercial seller.

11 (d) Restrictions to ensure that marijuana is not used or consumed
12 on the premises of a wholesaler.

13 (e) An inspection and tracking system to reasonably ensure that
14 all marijuana received by the wholesaler that is eventually sold is
15 assessed pursuant to Part 14.6 (commencing with Section 34001)
16 of Division 2 of the Revenue and Taxation Code.

17 (f) Recordkeeping consistent with the regulatory needs of the
18 department.

19 (g) *Adequate labeling of packages of marijuana to describe the*
20 *purity, potency, processing, and any adulteration of the product.*

21 ~~25405.~~

22 26060. The department shall issue and enforce regulations
23 concerning the sale of marijuana by off-sale general licensees.
24 Those regulations shall provide for all of the following:

25 (a) An inspection and tracking system to ensure that marijuana
26 may not be sold by a licensee if that marijuana has not been made
27 subject to an assessment provided for in Part 14.6 (commencing
28 with Section 34001) of Division 2 of the Revenue and Taxation
29 Code.

30 (b) Marijuana shall be kept behind a counter in an area not
31 directly accessible to any customer, and shall be stored in a case
32 that is locked between sales.

33 (c) Marijuana may not be sold to anyone under 21 years of age.

34 (d) Punishments for violations in actions against licensees that
35 are in substantial accord with those applicable to the regulation of
36 alcohol sales, including heavy penalties for permitting persons
37 under 21 years of age to purchase these products and other
38 appropriate regulatory provisions concerning such matters as the
39 time of sale, deliveries, and signage. It is the intent of the people
40 in enacting this act that the regulation of marijuana sales be

1 consistent with the statutory guidance regarding alcohol sales in
2 Chapter 16 (commencing with Section 25600), to the extent that
3 consistency is feasible.

4 (e) Recordkeeping consistent with the regulatory needs of the
5 department.

6 ~~25406.~~

7 26070. Beginning 30 days after the operative date of the
8 regulations issued pursuant to this chapter, ~~or 30 days after the~~
9 ~~date when federal law permits the possession and sale of marijuana~~
10 ~~consistent with this chapter, whichever is latest,~~ the department
11 shall begin to enforce the provisions of this chapter.

12 *SEC. 4. Section 7597 of the Government Code is amended to*
13 *read:*

14 7597. (a) No public employee or member of the public shall
15 smoke any tobacco *or marijuana* product inside a public building,
16 or in an outdoor area within 20 feet of a main exit, entrance, or
17 operable window of a public building, or in a passenger vehicle,
18 as defined by Section 465 of the Vehicle Code, owned by the state.

19 (b) This section shall not preempt the authority of any county,
20 city, city and county, California Community College campus,
21 campus of the California State University, or campus of the
22 University of California to adopt and enforce additional smoking
23 and tobacco control ordinances, regulations, or policies that are
24 more restrictive than the applicable standards required by this
25 chapter.

26 ~~SEC. 4.~~

27 *SEC. 5. Section 68152 of the Government Code is amended*
28 *to read:*

29 68152. The trial court clerk may destroy court records under
30 Section 68153 after notice of destruction and if there is no request
31 and order for transfer of the records, except the comprehensive
32 historical and sample superior court records preserved for research
33 under the California Rules of Court, when the following times
34 have expired after final disposition of the case in the categories
35 listed:

36 (a) Adoption: retain permanently.

37 (b) Change of name: retain permanently.

38 (c) Other civil actions and proceedings, as follows:

39 (1) Except as otherwise specified: 10 years.

1 (2) Where a party appears by a guardian ad litem: 10 years after
2 termination of the court's jurisdiction.

3 (3) Domestic violence: same period as duration of the restraining
4 or other orders and renewals, then retain the restraining or other
5 orders as a judgment; 60 days after expiration of the temporary
6 protective or temporary restraining order.

7 (4) Eminent domain: retain permanently.

8 (5) Family law, except as otherwise specified: 30 years.

9 (6) Harassment: same period as duration of the injunction and
10 renewals, then retain the injunction as a judgment; 60 days after
11 expiration of the temporary restraining order.

12 (7) Mental health (Lanterman Developmental Disabilities
13 Services Act and Lanterman-Petris-Short Act): 30 years.

14 (8) Paternity: retain permanently.

15 (9) Petition, except as otherwise specified: 10 years.

16 (10) Real property other than unlawful detainer: retain
17 permanently if the action affects title or an interest in real property.

18 (11) Small claims: 10 years.

19 (12) Unlawful detainer: one year if judgment is for possession
20 of the premises; 10 years if judgment is for money.

21 (d) Notwithstanding subdivision (c), any civil or small claims
22 case in the trial court:

23 (1) Involuntarily dismissed by the court for delay in prosecution
24 or failure to comply with state or local rules: one year.

25 (2) Voluntarily dismissed by a party without entry of judgment:
26 one year.

27 Notation of the dismissal shall be made on the civil index of
28 cases or on a separate dismissal index.

29 (e) Criminal.

30 (1) Capital felony (murder with special circumstances where
31 the prosecution seeks the death penalty): retain permanently. If
32 the charge is disposed of by acquittal or a sentence less than death,
33 the case shall be reclassified.

34 (2) Felony, except as otherwise specified: 75 years.

35 (3) Felony, except capital felony, with court records from the
36 initial complaint through the preliminary hearing or plea and for
37 which the case file does not include final sentencing or other final
38 disposition of the case because the case was bound over to the
39 superior court: five years.

40 (4) Misdemeanor, except as otherwise specified: five years.

1 (5) Misdemeanor alleging a violation of the Vehicle Code,
2 except as otherwise specified: three years.

3 (6) Misdemeanor alleging a violation of Section 23103, 23152,
4 or 23153 of the Vehicle Code: 10 years.

5 (7) Misdemeanor alleging a violation of Section 14601, 14601.1,
6 20002, 23104, 23105, 23109, or 23109.1 of the Vehicle Code: five
7 years.

8 (8) Misdemeanor alleging a marijuana violation under
9 subdivision (a) or (b) of Section 11357 of the Health and Safety
10 Code in accordance with the procedure set forth in Section 11361.5
11 of the Health and Safety Code: records shall be destroyed two
12 years from the date of conviction or from the date of arrest if no
13 conviction.

14 (9) Misdemeanor, infraction, or civil action alleging a violation
15 of the regulation and licensing of dogs under Sections 30951 to
16 30956, inclusive, of the Food and Agricultural Code or violation
17 of any other local ordinance: three years.

18 (10) Misdemeanor action resulting in a requirement that the
19 defendant register as a sex offender pursuant to Section 290 of the
20 Penal Code: 75 years. This paragraph shall apply to records relating
21 to a person convicted on or after September 20, 2006.

22 (11) Infraction, except as otherwise specified: three years.

23 (12) Parking infractions, including alleged violations under the
24 stopping, standing, and parking provisions set forth in Chapter 9
25 (commencing with Section 22500) of Division 11 of the Vehicle
26 Code: two years.

27 (f) Habeas corpus: same period as period for retention of the
28 records in the underlying case category.

29 (g) Juvenile.

30 (1) Dependent (Section 300 of the Welfare and Institutions
31 Code): upon reaching age 28 or on written request shall be released
32 to the juvenile five years after jurisdiction over the person has
33 terminated under subdivision (a) of Section 826 of the Welfare
34 and Institutions Code. Sealed records shall be destroyed upon court
35 order five years after the records have been sealed pursuant to
36 subdivision (c) of Section 389 of the Welfare and Institutions Code.

37 (2) Ward (Section 601 of the Welfare and Institutions Code):
38 upon reaching age 21 or on written request shall be released to the
39 juvenile five years after jurisdiction over the person has terminated
40 under subdivision (a) of Section 826 of the Welfare and Institutions

1 Code. Sealed records shall be destroyed upon court order five years
2 after the records have been sealed under subdivision (d) of Section
3 781 of the Welfare and Institutions Code.

4 (3) Ward (Section 602 of the Welfare and Institutions Code):
5 upon reaching age 38 under subdivision (a) of Section 826 of the
6 Welfare and Institutions Code. Sealed records shall be destroyed
7 upon court order when the subject of the record reaches the age
8 of 38 under subdivision (d) of Section 781 of the Welfare and
9 Institutions Code.

10 (4) Traffic and some nontraffic misdemeanors and infractions
11 (Section 601 of the Welfare and Institutions Code): upon reaching
12 age 21 or five years after jurisdiction over the person has terminated
13 under subdivision (c) of Section 826 of the Welfare and Institutions
14 Code. May be microfilmed or photocopied.

15 (5) Marijuana misdemeanor under subdivision (b) of Section
16 11357 of the Health and Safety Code in accordance with procedures
17 specified in subdivision (a) of Section 11361.5 of the Health and
18 Safety Code: upon reaching age 18 the records shall be destroyed.

19 (h) Probate.

20 (1) Conservatorship: 10 years after decree of termination.

21 (2) Guardianship: 10 years after the age of 18.

22 (3) Probate, including probated wills, except as otherwise
23 specified: retain permanently.

24 (i) Court records of the appellate division of the superior court:
25 five years.

26 (j) Other records.

27 (1) Applications in forma pauperis: any time after the disposition
28 of the underlying case.

29 (2) Arrest warrant: same period as period for retention of the
30 records in the underlying case category.

31 (3) Bench warrant: same period as period for retention of the
32 records in the underlying case category.

33 (4) Bond: three years after exoneration and release.

34 (5) Coroner's inquest report: same period as period for retention
35 of the records in the underlying case category; if no case, then
36 permanent.

37 (6) Court orders not associated with an underlying case, such
38 as orders for destruction of court records for telephone taps, or to
39 destroy drugs, and other miscellaneous court orders: three years.

1 (7) Court reporter notes: 10 years after the notes have been taken
2 in criminal and juvenile proceedings and five years after the notes
3 have been taken in all other proceedings, except notes reporting
4 proceedings in capital felony cases (murder with special
5 circumstances where the prosecution seeks the death penalty and
6 the sentence is death), including notes reporting the preliminary
7 hearing, which shall be retained permanently, unless the Supreme
8 Court on request of the court clerk authorizes the destruction.

9 (8) Electronic recordings made as the official record of the oral
10 proceedings under the California Rules of Court: any time after
11 final disposition of the case in infraction and misdemeanor
12 proceedings, 10 years in all other criminal proceedings, and five
13 years in all other proceedings.

14 (9) Electronic recordings not made as the official record of the
15 oral proceedings under the California Rules of Court: any time
16 either before or after final disposition of the case.

17 (10) Index, except as otherwise specified: retain permanently.

18 (11) Index for cases alleging traffic violations: same period as
19 period for retention of the records in the underlying case category.

20 (12) Judgments within the jurisdiction of the superior court
21 other than in a limited civil case, misdemeanor case, or infraction
22 case: retain permanently.

23 (13) Judgments in misdemeanor cases, infraction cases, and
24 limited civil cases: same period as period for retention of the
25 records in the underlying case category.

26 (14) Minutes: same period as period for retention of the records
27 in the underlying case category.

28 (15) Naturalization index: retain permanently.

29 (16) Ninety-day evaluation (under Section 1203.03 of the Penal
30 Code): same period as period for retention of the records in the
31 underlying case category, or period for completion or termination
32 of probation, whichever is longer.

33 (17) Register of actions or docket: same period as period for
34 retention of the records in the underlying case category, but in no
35 event less than 10 years for civil and small claims cases.

36 (18) Search warrant: 10 years, except search warrants issued in
37 connection with a capital felony case defined in paragraph (7),
38 which shall be retained permanently.

39 (k) Retention of the court records under this section shall be
40 extended as follows:

1 (1) By order of the court on its own motion, or on application
2 of a party or an interested member of the public for good cause
3 shown and on those terms as are just. A fee shall not be charged
4 for making the application.

5 (2) Upon application and order for renewal of the judgment to
6 the extended time for enforcing the judgment.

7 *SEC. 6. Section 1596.795 of the Health and Safety Code is*
8 *amended to read:*

9 1596.795. (a) The smoking of tobacco *or marijuana* in a
10 private residence that is licensed as a family day care home shall
11 be prohibited during the hours of operation as a family day care
12 home and in those areas of the family day care home where
13 children are present. Nothing in this section shall prohibit a city
14 or county from enacting or enforcing an ordinance relating to *the*
15 *smoking of tobacco or marijuana* in a family day care home if the
16 ordinance is more stringent than this section.

17 (b) The smoking of tobacco *or marijuana* on the premises of a
18 licensed day care center shall be prohibited.

19 ~~SEC. 5.~~

20 *SEC. 7. Section 11014.5 of the Health and Safety Code is*
21 *amended to read:*

22 11014.5. (a) “Drug paraphernalia” means all equipment,
23 products, and materials of any kind that are designed for use or
24 marketed for use in planting, propagating, cultivating, growing,
25 harvesting, manufacturing, compounding, converting, producing,
26 processing, preparing, testing, analyzing, packaging, repackaging,
27 storing, containing, concealing, injecting, ingesting, inhaling, or
28 otherwise introducing into the human body a controlled substance
29 in violation of this division. It includes, but is not limited to:

30 (1) Kits designed for use or marketed for use in planting,
31 propagating, cultivating, growing, or harvesting of any species of
32 plant which is a controlled substance or from which a controlled
33 substance can be derived.

34 (2) Kits designed for use or marketed for use in manufacturing,
35 compounding, converting, producing, processing, or preparing
36 controlled substances.

37 (3) Isomerization devices designed for use or marketed for use
38 in increasing the potency of any species of plant which is a
39 controlled substance.

- 1 (4) Testing equipment designed for use or marketed for use in
2 identifying, or in analyzing the strength, effectiveness, or purity
3 of controlled substances.
- 4 (5) Scales and balances designed for use or marketed for use in
5 weighing or measuring controlled substances.
- 6 (6) Containers and other objects designed for use or marketed
7 for use in storing or concealing controlled substances.
- 8 (7) Hypodermic syringes, needles, and other objects designed
9 for use or marketed for use in parenterally injecting controlled
10 substances into the human body.
- 11 (8) Objects designed for use or marketed for use in ingesting,
12 inhaling, or otherwise introducing cocaine into the human body,
13 such as:
 - 14 (A) Carburetion tubes and devices.
 - 15 (B) Smoking and carburetion masks.
 - 16 (C) Roach clips, meaning objects used to hold burning material
17 that has become too small or too short to be held in the hand.
 - 18 (D) Miniature cocaine spoons, and cocaine vials.
 - 19 (E) Chamber pipes.
 - 20 (F) Carburetor pipes.
 - 21 (G) Electric pipes.
 - 22 (H) Air-driven pipes.
 - 23 (I) Chillums.
 - 24 (J) Bongs.
 - 25 (K) Ice pipes or chillers.
- 26 (b) For the purposes of this section, the phrase “marketed for
27 use” means advertising, distributing, offering for sale, displaying
28 for sale, or selling in a manner which promotes the use of
29 equipment, products, or materials with controlled substances.
- 30 (c) In determining whether an object is drug paraphernalia, a
31 court or other authority may consider, in addition to all other
32 logically relevant factors, the following:
 - 33 (1) Statements by an owner or by anyone in control of the object
34 concerning its use.
 - 35 (2) Instructions, oral or written, provided with the object
36 concerning its use for ingesting, inhaling, or otherwise introducing
37 a controlled substance into the human body.
 - 38 (3) Descriptive materials accompanying the object which explain
39 or depict its use.
 - 40 (4) National and local advertising concerning its use.

1 (5) The manner in which the object is displayed for sale.

2 (6) Whether the owner, or anyone in control of the object, is a
3 legitimate supplier of like or related items to the community, such
4 as a licensed distributor or dealer of tobacco products.

5 (7) Expert testimony concerning its use.

6 (d) If any provision of this section or the application thereof to
7 any person or circumstance is held invalid, it is the intent of the
8 Legislature that the invalidity shall not affect other provisions or
9 applications of the section which can be given effect without the
10 invalid provision or application and to this end the provisions of
11 this section are severable.

12 ~~SEC. 6.~~

13 *SEC. 8.* Section 11054 of the Health and Safety Code is
14 amended to read:

15 11054. (a) The controlled substances listed in this section are
16 included in Schedule I.

17 (b) Opiates. Unless specifically excepted or unless listed in
18 another schedule, any of the following opiates, including their
19 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers
20 whenever the existence of those isomers, esters, ethers, and salts
21 is possible within the specific chemical designation:

22 (1) Acetylmethadol.

23 (2) Allylprodine.

24 (3) Alphacetylmethadol (except levoalphacetylmethadol, also
25 known as levo-alpha- acetylmethadol, levomethadyl acetate, or
26 LAAM).

27 (4) Alphameprodine.

28 (5) Alphamethadol.

29 (6) Benzethidine.

30 (7) Betacetylmethadol.

31 (8) Betameprodine.

32 (9) Betamethadol.

33 (10) Betaprodine.

34 (11) Clonitazene.

35 (12) Dextromoramide.

36 (13) Diampromide.

37 (14) Diethylthiambutene.

38 (15) Difenoxin.

39 (16) Dimenoxadol.

40 (17) Dimepheptanol.

- 1 (18) Dimethylthiambutene.
- 2 (19) Dioxaphetyl butyrate.
- 3 (20) Dipipanone.
- 4 (21) Ethylmethylthiambutene.
- 5 (22) Etonitazene.
- 6 (23) Etoxeridine.
- 7 (24) Furethidine.
- 8 (25) Hydroxypethidine.
- 9 (26) Ketobemidone.
- 10 (27) Levomoramide.
- 11 (28) Levophenacymorphan.
- 12 (29) Morpheridine.
- 13 (30) Noracymethadol.
- 14 (31) Norlevorphanol.
- 15 (32) Normethadone.
- 16 (33) Norpipanone.
- 17 (34) Phenadoxone.
- 18 (35) Phenampromide.
- 19 (36) Phenomorphan.
- 20 (37) Phenoperidine.
- 21 (38) Piritramide.
- 22 (39) Proheptazine.
- 23 (40) Properidine.
- 24 (41) Propiram.
- 25 (42) Racemoramide.
- 26 (43) Tilidine.
- 27 (44) Trimeperidine.
- 28 (45) Any substance which contains any quantity of
- 29 acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a
- 30 derivative thereof.
- 31 (46) Any substance which contains any quantity of the thiophene
- 32 analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl]
- 33 acetanilide) or a derivative thereof.
- 34 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 35 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
- 36 (c) Opium derivatives. Unless specifically excepted or unless
- 37 listed in another schedule, any of the following opium derivatives,
- 38 its salts, isomers, and salts of isomers whenever the existence of
- 39 those salts, isomers, and salts of isomers is possible within the
- 40 specific chemical designation:

- 1 (1) Acetorphine.
- 2 (2) Acetyldihydrocodeine.
- 3 (3) Benzylmorphine.
- 4 (4) Codeine methylbromide.
- 5 (5) Codeine-N-Oxide.
- 6 (6) Cyprenorphine.
- 7 (7) Desomorphine.
- 8 (8) Dihydromorphine.
- 9 (9) Drotebanol.
- 10 (10) Etorphine (except hydrochloride salt).
- 11 (11) Heroin.
- 12 (12) Hydromorphenol.
- 13 (13) Methyldesorphine.
- 14 (14) Methyldihydromorphine.
- 15 (15) Morphine methylbromide.
- 16 (16) Morphine methylsulfonate.
- 17 (17) Morphine-N-Oxide.
- 18 (18) Myrophine.
- 19 (19) Nicocodeine.
- 20 (20) Nicomorphine.
- 21 (21) Normorphine.
- 22 (22) Pholcodine.
- 23 (23) Thebacon.
- 24 (d) Hallucinogenic substances. Unless specifically excepted or
- 25 unless listed in another schedule, any material, compound, mixture,
- 26 or preparation, which contains any quantity of the following
- 27 hallucinogenic substances, or which contains any of its salts,
- 28 isomers, and salts of isomers whenever the existence of those salts,
- 29 isomers, and salts of isomers is possible within the specific
- 30 chemical designation (for purposes of this subdivision only, the
- 31 term “isomer” includes the optical, position, and geometric
- 32 isomers):
- 33 (1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other
- 34 names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine;
- 35 4-bromo-2,5-DMA.
- 36 (2) 2,5-dimethoxyamphetamine—Some trade or other names:
- 37 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- 38 (3) 4-methoxyamphetamine—Some trade or other names:
- 39 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ,
- 40 paramethoxyamphetamine, PMA.

- 1 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.
- 2 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other
- 3 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine;
- 4 “DOM”; and “STP.”
- 5 (6) 3,4-methylenedioxy amphetamine.
- 6 (7) 3,4,5-trimethoxy amphetamine.
- 7 (8) Bufotenine—Some trade or other names:
- 8 3-(beta-dimethylaminoethyl)-5-hydroxyindole;
- 9 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserotonin,
- 10 5-hydroxy-N,N-dimethyltryptamine; mappine.
- 11 (9) Diethyltryptamine—Some trade or other names:
- 12 N,N-Diethyltryptamine; DET.
- 13 (10) Dimethyltryptamine—Some trade or other names: DMT.
- 14 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,
- 15 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido
- 16 [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- 17 (12) Lysergic acid diethylamide.
- 18 (14) Mescaline.
- 19 (15) Peyote—Meaning all parts of the plant presently classified
- 20 botanically as *Lophophora williamsii* Lemaire, whether growing
- 21 or not, the seeds thereof, any extract from any part of the plant,
- 22 and every compound, manufacture, salts, derivative, mixture, or
- 23 preparation of the plant, its seeds or extracts (interprets 21 U.S.C.
- 24 Sec. 812(c), Schedule 1(c)(12)).
- 25 (16) N-ethyl-3-piperidyl benzilate.
- 26 (17) N-methyl-3-piperidyl benzilate.
- 27 (18) Psilocybin.
- 28 (19) Psilocyn.
- 29 (20) Synthetic tetrahydrocannabinols not derived from cannabis
- 30 plants. Synthetic equivalents of the substances contained in the
- 31 plant, or in the resinous extractives of *Cannabis*, sp. and/or
- 32 synthetic substances, derivatives, and their isomers with similar
- 33 chemical structure and pharmacological activity such as the
- 34 following: delta 1 cis or trans tetrahydrocannabinol, and their
- 35 optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their
- 36 optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and
- 37 its optical isomers.
- 38 (Since nomenclature of these substances is not internationally
- 39 standardized, compounds of these structures, regardless of
- 40 numerical designation of atomic positions covered).

(21) Ethylamine analog of phencyclidine—Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

(22) Pyrrolidine analog of phencyclidine—Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

(23) Thiophene analog of phencyclidine—Some trade or other names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Gamma hydroxybutyric acid (also known by other names such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gammabutyrolactone, for which an application has not been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:

(1) Cocaine base.

(2) Fenethylline, including its salts.

(3) N-Ethylamphetamine, including its salts.

~~SEC. 7.~~

SEC. 9. Section 11357 of the Health and Safety Code is amended to read:

11357. (a) Except as authorized by law, every person 18 years of age or over who possesses marijuana or concentrated cannabis upon the grounds of, or within, any school providing instruction

1 in kindergarten or any of grades 1 through 12 during hours the
2 school is open for classes or school-related programs is guilty of
3 a misdemeanor and shall be punished by a fine of not more than
4 five hundred dollars (\$500), or by imprisonment in the county jail
5 for a period of not more than 10 days, or both.

6 (b) Except as authorized by law, every person under the age of
7 18 who possesses marijuana or concentrated cannabis, upon the
8 grounds of, or within, any school providing instruction in
9 kindergarten or any of grades 1 through 12 during hours the school
10 is open for classes or school-related programs is guilty of a
11 misdemeanor and shall be subject to the following dispositions:

12 (1) A fine of not more than two hundred fifty dollars (\$250),
13 upon a finding that a first offense has been committed.

14 (2) A fine of not more than five hundred dollars (\$500), or
15 commitment to a juvenile hall, ranch, camp, forestry camp, or
16 secure juvenile home for a period of not more than 10 days, or
17 both, upon a finding that a second or subsequent offense has been
18 committed.

19 ~~SEC. 8.~~

20 *SEC. 10.* Section 11358 of the Health and Safety Code is
21 repealed.

22 ~~SEC. 9.~~

23 *SEC. 11.* Section 11359 of the Health and Safety Code is
24 repealed.

25 ~~SEC. 10.~~

26 *SEC. 12.* Section 11360 of the Health and Safety Code is
27 repealed.

28 ~~SEC. 11. Section 11361 of the Health and Safety Code is~~
29 ~~repealed.~~

30 ~~SEC. 12.~~

31 *SEC. 13.* Section 11364.5 of the Health and Safety Code is
32 amended to read:

33 11364.5. (a) Except as authorized by law, no person shall
34 maintain or operate any place of business in which drug
35 paraphernalia is kept, displayed or offered in any manner, sold,
36 furnished, transferred or given away unless such drug paraphernalia
37 is completely and wholly kept, displayed or offered within a
38 separate room or enclosure to which persons under the age of 18
39 years not accompanied by a parent or legal guardian are excluded.
40 Each entrance to such a room or enclosure shall be signposted in

1 reasonably visible and legible words to the effect that drug
2 paraphernalia is kept, displayed or offered in such room or
3 enclosure and that minors, unless accompanied by a parent or legal
4 guardian, are excluded.

5 (b) Except as authorized by law, no owner, manager, proprietor
6 or other person in charge of any room or enclosure, within any
7 place of business, in which drug paraphernalia is kept, displayed
8 or offered in any manner, sold, furnished, transferred or given
9 away shall permit or allow any person under the age of 18 years
10 to enter, be in, remain in or visit such room or enclosure unless
11 such minor person is accompanied by one of his or her parents or
12 by his or her legal guardian.

13 (c) Unless authorized by law, no person under the age of 18
14 years shall enter, be in, remain in or visit any room or enclosure
15 in any place of business in which drug paraphernalia is kept,
16 displayed or offered in any manner, sold, furnished, transferred or
17 given away unless accompanied by one of his or her parents or by
18 his or her legal guardian.

19 (d) As used in this section, “drug paraphernalia” means all
20 equipment, products, and materials of any kind which are intended
21 for use or designed for use, in planting, propagating, cultivating,
22 growing, harvesting, manufacturing, compounding, converting,
23 producing, processing, preparing, testing, analyzing, packaging,
24 repackaging, storing, containing, concealing, injecting, ingesting,
25 inhaling, or otherwise introducing into the human body a controlled
26 substance. “Drug paraphernalia” includes, but is not limited to, all
27 of the following:

28 (1) Kits intended for use or designed for use in planting,
29 propagating, cultivating, growing or harvesting of any species of
30 plant which is a controlled substance or from which a controlled
31 substance can be derived.

32 (2) Kits intended for use or designed for use in manufacturing,
33 compounding, converting, producing, processing, or preparing
34 controlled substances.

35 (3) Isomerization devices intended for use or designed for use
36 in increasing the potency of any species of plant which is a
37 controlled substance.

38 (4) Testing equipment intended for use or designed for use in
39 identifying, or in analyzing the strength, effectiveness or purity of
40 controlled substances.

- 1 (5) Scales and balances intended for use or designed for use in
2 weighing or measuring controlled substances.
- 3 (6) Diluents and adulterants, such as quinine hydrochloride,
4 mannitol, mannite, dextrose, and lactose, intended for use or
5 designed for use in cutting controlled substances.
- 6 (7) Blenders, bowls, containers, spoons, and mixing devices
7 intended for use or designed for use in compounding controlled
8 substances.
- 9 (8) Capsules, balloons, envelopes, and other containers intended
10 for use or designed for use in packaging small quantities of
11 controlled substances.
- 12 (9) Containers and other objects intended for use or designed
13 for use in storing or concealing controlled substances.
- 14 (10) Hypodermic syringes, needles, and other objects intended
15 for use or designed for use in parenterally injecting controlled
16 substances into the human body.
- 17 (11) Objects intended for use or designed for use in ingesting,
18 inhaling, or otherwise introducing cocaine into the human body,
19 such as the following:
 - 20 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
21 pipes with or without screens, permanent screens, hashish heads,
22 or punctured metal bowls.
 - 23 (B) Water pipes.
 - 24 (C) Carburetion tubes and devices.
 - 25 (D) Smoking and carburetion masks.
 - 26 (E) Roach clips, meaning objects used to hold burning material
27 that has become too small or too short to be held in the hand.
 - 28 (F) Miniature cocaine spoons, and cocaine vials.
 - 29 (G) Chamber pipes.
 - 30 (H) Carburetor pipes.
 - 31 (I) Electric pipes.
 - 32 (J) Air-driven pipes.
 - 33 (K) Chillums.
 - 34 (L) Bongs.
 - 35 (M) Ice pipes or chillers.
- 36 (e) In determining whether an object is drug paraphernalia, a
37 court or other authority may consider, in addition to all other
38 logically relevant factors, the following:
 - 39 (1) Statements by an owner or by anyone in control of the object
40 concerning its use.

1 (2) Prior convictions, if any, of an owner, or of anyone in control
2 of the object, under any state or federal law relating to any
3 controlled substance.

4 (3) Direct or circumstantial evidence of the intent of an owner,
5 or of anyone in control of the object, to deliver it to persons whom
6 he or she knows, or should reasonably know, intend to use the
7 object to facilitate a violation of this section. The innocence of an
8 owner, or of anyone in control of the object, as to a direct violation
9 of this section shall not prevent a finding that the object is intended
10 for use, or designed for use, as drug paraphernalia.

11 (4) Instructions, oral or written, provided with the object
12 concerning its use.

13 (5) Descriptive materials, accompanying the object which
14 explain or depict its use.

15 (6) National and local advertising concerning its use.

16 (7) The manner in which the object is displayed for sale.

17 (8) Whether the owner, or anyone in control of the object, is a
18 legitimate supplier of like or related items to the community, such
19 as a licensed distributor or dealer of tobacco or marijuana products.

20 (9) The existence and scope of legitimate uses for the object in
21 the community.

22 (10) Expert testimony concerning its use.

23 (f) This section shall not apply to any of the following:

24 (1) Any pharmacist or other authorized person who sells or
25 furnishes drug paraphernalia described in paragraph (11) of
26 subdivision (d) upon the prescription of a physician, dentist,
27 podiatrist or veterinarian.

28 (2) Any physician, dentist, podiatrist or veterinarian who
29 furnishes or prescribes drug paraphernalia described in paragraph
30 (11) of subdivision (d) to his or her patients.

31 (3) Any manufacturer, wholesaler or retailer licensed by the
32 California State Board of Pharmacy to sell or transfer drug
33 paraphernalia described in paragraph (11) of subdivision (d).

34 (g) Notwithstanding any other provision of law, including
35 Section 11374, violation of this section shall not constitute a
36 criminal offense, but operation of a business in violation of the
37 provisions of this section shall be grounds for revocation or
38 nonrenewal of any license, permit, or other entitlement previously
39 issued by a city, county, or city and county for the privilege of
40 engaging in such business and shall be grounds for denial of any

1 future license, permit, or other entitlement authorizing the conduct
2 of such business or any other business, if the business includes the
3 sale of drug paraphernalia.

4 ~~SEC. 13.~~

5 *SEC. 14.* Section 11370 of the Health and Safety Code is
6 amended to read:

7 11370. (a) Any person convicted of violating Section 11350,
8 11351, 11351.5, 11352, 11353, 11355, 11361, 11363, 11366, or
9 11368, or of committing any offense referred to in those sections,
10 shall not, in any case, be granted probation by the trial court or
11 have the execution of the sentence imposed upon him or her
12 suspended by the court, if he or she has been previously convicted
13 of any offense described in subdivision (c).

14 (b) Any person who was 18 years of age or over at the time of
15 the commission of the offense and is convicted for the first time
16 of selling, furnishing, administering, or giving a controlled
17 substance which is (1) specified in subdivision (b), (c), (e), or
18 paragraph (1) of subdivision (f) of Section 11054, specified in
19 paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
20 or specified in subdivision (b) or (c) of Section 11055, or (2) which
21 is a narcotic drug classified in Schedule III, IV, or V, to a minor
22 or inducing a minor to use such a controlled substance in violation
23 of law shall not, in any case, be granted probation by the trial court
24 or have the execution of the sentence imposed upon him or her
25 suspended by the court.

26 (c) Any previous conviction of any of the following offenses,
27 or of an offense under the laws of another state or of the United
28 States which, if committed in this state, would have been
29 punishable as such an offense, shall render a person ineligible for
30 probation or suspension of sentence pursuant to subdivision (a) of
31 this section:

32 (1) Any felony offense described in this division involving a
33 controlled substance specified in subdivision (b), (c), (e), or
34 paragraph (1) of subdivision (f) of Section 11054, specified in
35 paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
36 or specified in subdivision (b) or (c) of Section 11055.

37 (2) Any felony offense described in this division involving a
38 narcotic drug classified in Schedule III, IV, or V.

39 (d) The existence of any previous conviction or fact which would
40 make a person ineligible for suspension of sentence or probation

1 under this section shall be alleged in the information or indictment,
2 and either admitted by the defendant in open court, or found to be
3 true by the jury trying the issue of guilt or by the court where guilt
4 is established by a plea of guilty or nolo contendere or by trial by
5 the court sitting without a jury.

6 ~~SEC. 14.~~

7 *SEC. 15.* Section 11470 of the Health and Safety Code is
8 amended to read:

9 11470. The following are subject to forfeiture:

10 (a) All controlled substances which have been manufactured,
11 distributed, dispensed, or acquired in violation of this division.

12 (b) All raw materials, products, and equipment of any kind
13 which are used, or intended for use, in manufacturing,
14 compounding, processing, delivering, importing, or exporting any
15 controlled substance in violation of this division.

16 (c) All property except real property or a boat, airplane, or any
17 vehicle which is used, or intended for use, as a container for
18 property described in subdivision (a) or (b).

19 (d) All books, records, and research products and materials,
20 including formulas, microfilm, tapes, and data which are used, or
21 intended for use, in violation of this division.

22 (e) The interest of any registered owner of a boat, airplane, or
23 any vehicle other than an implement of husbandry, as defined in
24 Section 36000 of the Vehicle Code, which has been used as an
25 instrument to facilitate the manufacture of, or possession for sale
26 or sale of 14.25 grams or more of heroin or cocaine base as
27 specified in paragraph (1) of subdivision (f) of Section 11054, or
28 a substance containing 14.25 grams or more of heroin or cocaine
29 base as specified in paragraph (1) of subdivision (f) of Section
30 11054, or 14.25 grams or more of a substance containing heroin
31 or cocaine base as specified in paragraph (1) of subdivision (f) of
32 Section 11054, or 28.5 grams or more of Schedule I controlled
33 substances except peyote or psilocybin; 10 pounds dry weight or
34 more of peyote or psilocybin; or 28.5 grams or more of cocaine,
35 as specified in paragraph (6) of subdivision (b) of Section 11055,
36 or methamphetamine; or a substance containing 28.5 grams or
37 more of cocaine, as specified in paragraph (6) of subdivision (b)
38 of Section 11055, or methamphetamine; or 57 grams or more of
39 a substance containing cocaine, as specified in paragraph (6) of
40 subdivision (b) of Section 11055, or methamphetamine; or 28.5

1 grams or more of Schedule II controlled substances. No interest
2 in a vehicle which may be lawfully driven on the highway with a
3 class C, class M1, or class M2 license, as prescribed in Section
4 12804 of the Vehicle Code, may be forfeited under this subdivision
5 if there is a community property interest in the vehicle by a person
6 other than the defendant and the vehicle is the sole class C, class
7 M1, or class M2 vehicle available to the defendant's immediate
8 family.

9 (f) All moneys, negotiable instruments, securities, or other things
10 of value furnished or intended to be furnished by any person in
11 exchange for a controlled substance, all proceeds traceable to such
12 an exchange, and all moneys, negotiable instruments, or securities
13 used or intended to be used to facilitate any violation of Section
14 11351, 11351.5, 11352, 11355, 11378, 11378.5, 11379, 11379.5,
15 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of
16 the Penal Code, or a felony violation of Section 11366.8 of this
17 code, insofar as the offense involves manufacture, sale, possession
18 for sale, offer for sale, or offer to manufacture, or conspiracy to
19 commit at least one of those offenses, if the exchange, violation,
20 or other conduct which is the basis for the forfeiture occurred
21 within five years of the seizure of the property, or the filing of a
22 petition under this chapter, or the issuance of an order of forfeiture
23 of the property, whichever comes first.

24 (g) The real property of any property owner who is convicted
25 of violating Section 11366, 11366.5, or 11366.6 with respect to
26 that property. However, property which is used as a family
27 residence or for other lawful purposes, or which is owned by two
28 or more persons, one of whom had no knowledge of its unlawful
29 use, shall not be subject to forfeiture.

30 (h) Subject to the requirements of Section 11488.5 and except
31 as further limited by this subdivision to protect innocent parties
32 who claim a property interest acquired from a defendant, all right,
33 title, and interest in any personal property described in this section
34 shall vest in the state upon commission of the act giving rise to
35 forfeiture under this chapter, if the state or local governmental
36 entity proves a violation of Section 11351, 11351.5, 11352, 11355,
37 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383
38 of this code, or Section 182 of the Penal Code, or a felony violation
39 of Section 11366.8 of this code, insofar as the offense involves
40 the manufacture, sale, possession for sale, offer for sale, offer to

1 manufacture, or conspiracy to commit at least one of those offenses,
2 in accordance with the burden of proof set forth in paragraph (1)
3 of subdivision (i) of Section 11488.4 or, in the case of cash or
4 negotiable instruments in excess of twenty-five thousand dollars
5 (\$25,000), paragraph (4) of subdivision (i) of Section 11488.4.

6 The operation of the special vesting rule established by this
7 subdivision shall be limited to circumstances where its application
8 will not defeat the claim of any person, including a bona fide
9 purchaser or encumbrancer who, pursuant to Section 11488.5,
10 11488.6, or 11489, claims an interest in the property seized,
11 notwithstanding that the interest in the property being claimed was
12 acquired from a defendant whose property interest would otherwise
13 have been subject to divestment pursuant to this subdivision.

14 ~~SEC. 15. Section 11479 of the Health and Safety Code is~~
15 ~~amended to read:~~

16 ~~11479. Notwithstanding Sections 11473 and 11473.5, at any~~
17 ~~time after seizure by a law enforcement agency of a suspected~~
18 ~~controlled substance, that amount in excess of 10 pounds in gross~~
19 ~~weight may be destroyed without a court order by the chief of the~~
20 ~~law enforcement agency or a designated subordinate. Destruction~~
21 ~~shall not take place pursuant to this section until all of the following~~
22 ~~requirements are satisfied:~~

23 ~~(a) At least five random and representative samples have been~~
24 ~~taken, for evidentiary purposes, from the total amount of suspected~~
25 ~~controlled substances to be destroyed. These samples shall be in~~
26 ~~addition to the 10 pounds required above.~~

27 ~~(b) Photographs have been taken which reasonably demonstrate~~
28 ~~the total amount of the suspected controlled substance to be~~
29 ~~destroyed.~~

30 ~~(c) The gross weight of the suspected controlled substance has~~
31 ~~been determined, either by actually weighing the suspected~~
32 ~~controlled substance or by estimating that weight after dimensional~~
33 ~~measurement of the total suspected controlled substance.~~

34 ~~(d) The chief of the law enforcement agency has determined~~
35 ~~that it is not reasonably possible to preserve the suspected~~
36 ~~controlled substance in place, or to remove the suspected controlled~~
37 ~~substance to another location. In making this determination, the~~
38 ~~difficulty of transporting and storing the suspected controlled~~
39 ~~substance to another site and the storage facilities may be taken~~
40 ~~into consideration.~~

1 ~~Subsequent to any destruction of a suspected controlled substance~~
2 ~~pursuant to this section, an affidavit shall be filed within 30 days~~
3 ~~in the court which has jurisdiction over any pending criminal~~
4 ~~proceedings pertaining to that suspected controlled substance,~~
5 ~~reciting the applicable information required by subdivisions (a),~~
6 ~~(b), (c), and (d) together with information establishing the location~~
7 ~~of the suspected controlled substance, and specifying the date and~~
8 ~~time of the destruction. In the event that there are no criminal~~
9 ~~proceedings pending which pertain to that suspected controlled~~
10 ~~substance, the affidavit may be filed in any court within the county~~
11 ~~which would have jurisdiction over a person against whom those~~
12 ~~criminal charges might be filed.~~

13 SEC. 16. Section 11485 of the Health and Safety Code is
14 repealed.

15 SEC. 17. Section 11488 of the Health and Safety Code is
16 amended to read:

17 11488. (a) Any peace officer of this state, subsequent to
18 making or attempting to make an arrest for a violation of Section
19 11351, 11351.5, 11352, 11355, 11378, 11378.5, 11379, 11379.5,
20 11379.6, or 11382 of this code, or Section 182 of the Penal Code
21 insofar as the offense involves manufacture, sale, purchase for the
22 purpose of sale, possession for sale or offer to manufacture or sell,
23 or conspiracy to commit one of those offenses, may seize any item
24 subject to forfeiture under subdivisions (a) to (f), inclusive, of
25 Section 11470. The peace officer shall also notify the Franchise
26 Tax Board of a seizure where there is reasonable cause to believe
27 that the value of the seized property exceeds five thousand dollars
28 (\$5,000).

29 (b) Receipts for property seized pursuant to this section shall
30 be delivered to any person out of whose possession such property
31 was seized, in accordance with Section 1412 of the Penal Code.
32 In the event property seized was not seized out of anyone's
33 possession, receipt for the property shall be delivered to the
34 individual in possession of the premises at which the property was
35 seized.

36 (c) There shall be a presumption affecting the burden of proof
37 that the person to whom a receipt for property was issued is the
38 owner thereof. This presumption may, however, be rebutted at the
39 forfeiture hearing specified in Section 11488.5.

1 SEC. 18. Section 11532 of the Health and Safety Code is
2 amended to read:

3 11532. (a) It is unlawful for any person to loiter in any public
4 place in a manner and under circumstances manifesting the purpose
5 and with the intent to commit an offense specified in Chapter 6
6 (commencing with Section 11350) and Chapter 6.5 (commencing
7 with Section 11400).

8 (b) Among circumstances that may be considered in determining
9 whether a person has the requisite intent to engage in drug-related
10 activity are that the person:

11 (1) Acts as a “look-out.”

12 (2) Transfers small objects or packages for currency in a furtive
13 fashion.

14 (3) Tries to conceal himself or herself or any object that
15 reasonably could be involved in an unlawful drug-related activity.

16 (4) Uses signals or language indicative of summoning purchasers
17 of illegal drugs.

18 (5) Repeatedly beckons to, stops, attempts to stop, or engages
19 in conversations with passersby, whether on foot or in a motor
20 vehicle, indicative of summoning purchasers of illegal drugs.

21 (6) Repeatedly passes to or receives from passersby, whether
22 on foot or in a motor vehicle, money or small objects.

23 (7) Is under the influence of a controlled substance or possesses
24 narcotic or drug paraphernalia. For the purposes of this paragraph,
25 “narcotic or drug paraphernalia” means any device, contrivance,
26 instrument, or apparatus designed or marketed for the use of
27 smoking, injecting, ingesting, or consuming PCP or any controlled
28 substance, including, but not limited to, roach clips, cigarette
29 papers, and rollers designed or marketed for use in smoking a
30 controlled substance.

31 (8) Has been convicted in any court within this state, within
32 five years prior to the arrest under this chapter, of any violation
33 involving the use, possession, or sale of any of the substances
34 referred to in Chapter 6 (commencing with Section 11350) or
35 Chapter 6.5 (commencing with Section 11400), or has been
36 convicted of any violation of those provisions or substantially
37 similar laws of any political subdivision of this state or of any
38 other state.

39 (9) Is currently subject to any order prohibiting his or her
40 presence in any high drug activity geographic area.

1 (10) Has engaged, within six months prior to the date of arrest
2 under this section, in any behavior described in this subdivision,
3 with the exception of paragraph (8), or in any other behavior
4 indicative of illegal drug-related activity.

5 (c) The list of circumstances set forth in subdivision (b) is not
6 exclusive. The circumstances set forth in subdivision (b) should
7 be considered particularly salient if they occur in an area that is
8 known for unlawful drug use and trafficking, or if they occur on
9 or in premises that have been reported to law enforcement as a
10 place suspected of unlawful drug activity. Any other relevant
11 circumstances may be considered in determining whether a person
12 has the requisite intent. Moreover, no one circumstance or
13 combination of circumstances is in itself determinative of intent.
14 Intent must be determined based on an evaluation of the particular
15 circumstances of each case.

16 SEC. 19. Section 11703 of the Health and Safety Code is
17 amended to read:

18 11703. As used in this division:

19 (a) “Marketing of illegal controlled substances” means the
20 possession for sale, sale, or distribution of a specified illegal
21 controlled substance, and shall include all aspects of making such
22 a controlled substance available, including, but not limited to, its
23 manufacture.

24 (b) “Individual user of an illegal controlled substance” means
25 the individual whose use of a specified illegal controlled substance
26 is the basis of an action brought under this division.

27 (c) “Level 1 offense” means the possession for sale of less than
28 four ounces or the sale or furnishing of less than one ounce of a
29 specified illegal controlled substance.

30 (d) “Level 2 offense” means the possession for sale of four
31 ounces or more but less than eight ounces of, or the sale or
32 furnishing of one ounce or more but less than two ounces of, a
33 specified illegal controlled substance.

34 (e) “Level 3 offense” means the possession for sale of eight
35 ounces or more but less than 16 ounces of, or the sale or furnishing
36 of two ounces or more but less than four ounces of, a specified
37 illegal controlled substance.

38 (f) “Level 4 offense” means the possession for sale of 16 ounces
39 or more of, or the sale or furnishing of four ounces or more of, a
40 specified illegal controlled substance.

(g) “Participate in the marketing of illegal controlled substances” means to transport, import into this state, sell, possess with intent to sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away a specified illegal controlled substance. “Participate in the marketing of illegal controlled substances” shall include the manufacturing of an illegal controlled substance, but shall not include the purchase or receipt of an illegal controlled substance for personal use only.

(h) “Person” means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or a foreign country.

(i) “Period of illegal use” means, in relation to the individual user of an illegal controlled substance, the time of the individual’s first illegal use of an illegal controlled substance to the accrual of the cause of action.

(j) “Place of illegal activity” means, in relation to the individual user of an illegal controlled substance, each county in which the individual illegally possesses or uses an illegal controlled substance during the period of the individual’s use of an illegal controlled substance.

(k) “Place of participation” means, in relation to a defendant in an action brought under this division, each county in which the person participates in the marketing of illegal controlled substances during the period of the person’s participation in the marketing of illegal controlled substances.

(l) “Specified illegal controlled substance” means cocaine, phencyclidine, heroin, or methamphetamine and any other illegal controlled substance the manufacture, cultivation, importation into this state, transportation, possession for sale, sale, furnishing, administering, or giving away of which is a violation of Section 11351, 11351.5, 11352, 11378.5, 11379.5, or 11383.

SEC. 20. Section 11705 of the Health and Safety Code is amended to read:

11705. (a) Any one or more of the following persons may bring an action for damages caused by an individual’s use of an illegal controlled substance:

(1) A parent, legal guardian, child, spouse, or sibling of the individual controlled substance user.

1 (2) An individual who was exposed to an illegal controlled
2 substance in utero.

3 (3) An employer of the individual user of an illegal controlled
4 substance.

5 (4) A medical facility, insurer, employer, or other
6 nongovernmental entity that funds a drug treatment program or
7 employee assistance program for the individual user of an illegal
8 controlled substance or that otherwise expended money on behalf
9 of the individual user of an illegal controlled substance. No public
10 agency other than a public agency medical facility shall have a
11 cause of action under this division.

12 (5) A person injured as a result of the willful, reckless, or
13 negligent actions of an individual user of an illegal controlled
14 substance.

15 (b) A person entitled to bring an action under this section may
16 seek damages from one or more of the following:

17 (1) A person who sold, administered, or furnished an illegal
18 controlled substance to the individual user of the illegal controlled
19 substance.

20 (2) A person who knowingly participated in the marketing of
21 illegal controlled substances, if all of the following apply:

22 (A) The place of illegal activity by the individual user of an
23 illegal controlled substance is within the city, city and county, or
24 unincorporated area of the county in which the defendant's place
25 of participation is situated.

26 (B) The defendant's participation in the marketing of illegal
27 controlled substances was connected with the same type of
28 specified illegal controlled substance used by the individual user
29 of an illegal controlled substance, and the defendant has been
30 convicted of an offense for that type of specified illegal controlled
31 substance.

32 (C) The defendant participated in the marketing of illegal
33 controlled substances at any time during the period the individual
34 user of an illegal controlled substance illegally used the controlled
35 substance.

36 (D) The underlying offense for the conviction of the specified
37 illegal controlled substance occurred in the same county as the
38 individual user's place of use.

39 (c) As used in subdivision (b), "knowingly participated in the
40 marketing of illegal controlled substances" means a conviction for

1 transporting, importing into this state, selling, possessing with
2 intent to sell, furnishing, administering, or giving away, or offering
3 to transport, import into this state, sell, furnish, administer, or give
4 away a specified illegal controlled substance specified in
5 subdivision (c), (d), (e), or (f) of Section 11703, which are separate
6 in time.

7 (d) A person entitled to bring an action under this section may
8 recover all of the following damages:

9 (1) Economic damages, including, but not limited to, the cost
10 of treatment and rehabilitation, medical expenses, loss of economic
11 or educational potential, loss of productivity, absenteeism, support
12 expenses, accidents or injury, and any other pecuniary loss
13 proximately caused by the use of an illegal controlled substance.

14 (2) Noneconomic damages, including, but not limited to,
15 physical and emotional pain, suffering, physical impairment,
16 emotional distress, medical anguish, disfigurement, loss of
17 enjoyment, loss of companionship, services and consortium, and
18 other nonpecuniary losses proximately caused by an individual's
19 use of an illegal controlled substance.

20 (3) Exemplary damages.

21 (4) Reasonable attorney fees.

22 (5) Costs of suit, including, but not limited to, reasonable
23 expenses for expert testimony.

24 SEC. 21. Division 10.3 (commencing with Section 11720) is
25 added to the Health and Safety Code, to read:

26
27 DIVISION 10.3. MARIJUANA
28

29 11720. For purposes of this division, "marijuana" means all
30 parts of the plant *Cannabis sativa* L., whether growing or not; the
31 seeds thereof; the resin extracted from any part of the plant;
32 concentrated cannabis; and every compound, manufacture, salt,
33 derivative, mixture, or preparation of the plant, its seeds or resin.
34 It does not include the mature stalks of the plant, fiber produced
35 from the stalks, oil or cake made from the seeds of the plant, any
36 other compound, manufacture, salt, derivative, mixture, or
37 preparation of the mature stalks (except the resin extracted
38 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
39 that is incapable of germination. *For purposes of this division,*
40 *"marijuana" does not include "medical marijuana" that is*

1 *regulated under Article 2.5 (commencing with Section 11362.7)*
2 *of Chapter 6 of Division 10.*

3 11721. It is lawful and not a violation of California law for a
4 person 21 years of age or older to possess or transport marijuana.

5 11722. (a) It is lawful and not a violation of California law to
6 sell marijuana to a person 21 years of age or older as provided in
7 ~~Chapter 14.5 (commencing with Section 25400)~~ *Chapter 19*
8 *(commencing with Section 26000)* of Division 9 of the Business
9 and Professions Code. Any sale of marijuana by a person not
10 licensed as provided therein after the date determined by Section
11 25406 of the Business and Professions Code is a violation of this
12 division.

13 (b) Until the date specified by subdivision (a), it is lawful and
14 not a violation of California law to sell marijuana to a person 21
15 years of age or older.

16 11723. (a) It is lawful and not a violation of California law
17 for a person 21 years of age or older to smoke or ingest marijuana
18 in one's home, or in any private residence, or upon the grounds of
19 that home or residence not visible from any public place or
20 neighboring property, with the consent of a resident 21 years of
21 age or older.

22 (b) It is an infraction to smoke ~~or ingest~~ marijuana in a public
23 place.

24 11724. (a) It is lawful and not a violation of California law,
25 except as provided in subdivision (f) of Section 647 of the Penal
26 Code, or in Section 11729, for a person 21 years of age or older
27 to be under the influence of marijuana.

28 11725. It is unlawful for a person not licensed pursuant to
29 ~~Chapter 14.5 (commencing with Section 25400)~~ *Chapter 19*
30 *(commencing with Section 26000)* of Division 9 of the Business
31 and Professions Code to cultivate marijuana, except in compliance
32 with the following requirements:

33 (a) Marijuana may be cultivated only by persons 21 years of
34 age or older.

35 (b) Marijuana may be cultivated only in a location in the home
36 or yard in which the marijuana is not visible from any public place.
37 For purposes of this paragraph, "public place" does not include
38 air space, or any place from which a viewer would violate the
39 cultivator's legitimate expectation of privacy.

1 (c) Each person 21 years of age or older may have in cultivation
2 no more than ~~10~~ six mature plants at any given time.

3 (d) A licensed nursery may cultivate seedlings for sale to persons
4 21 years of age or older, but shall destroy any seedling if it has not
5 been purchased by a consumer before it reaches maturity.

6 (e) Aside from the sale of seedlings by a licensed nursery,
7 marijuana cultivated pursuant to this section may not be sold.

8 ~~(f) The presence of persons younger than 21 years of age in a~~
9 ~~household does not affect the lawfulness of the cultivation of~~
10 ~~marijuana under this division.~~

11 11726. (a) Unlawful cultivation of marijuana is an infraction,
12 punishable by a fine of up to one hundred dollars (\$100).

13 (b) Providing or selling marijuana to, or purchasing or
14 cultivating marijuana for a person under 21 years of age is an
15 infraction, punishable by a fine of up to one hundred dollars (\$100).
16 However, this division is not intended to preclude prosecution
17 under Section 272 of the Penal Code, or any similar provision,
18 where appropriate.

19 *(c) Selling, providing, or transporting marijuana, or possessing*
20 *marijuana with the intent to sell, provide, or transport that*
21 *marijuana, into a state in which the receiving, purchasing, or*
22 *possessing marijuana would violate that state's laws is a felony.*

23 ~~(e)~~
24 (d) Possession or use of marijuana by a person under 21 years
25 of age is an infraction, punishable by a fine of up to one hundred
26 dollars (\$100).

27 ~~(d)~~
28 (e) Any other violation of this division is an infraction,
29 punishable by a fine of up to one hundred dollars (\$100).

30 11727. Notwithstanding any other law, it is lawful and not a
31 violation of California law to possess, transport, or sell the mature
32 stalks of the plant *Cannabis sativa* L., fiber produced from the
33 stalks, oil or cake made from the seeds of the plant, any other
34 compound, manufacture, salt, derivative, mixture, or preparation
35 of the mature stalks (except the resin extracted therefrom, which
36 is regulated as marijuana), fiber, oil, or cake, or the sterilized seed
37 of the plant that is incapable of germination.

38 11728. State or local funds may not be expended on, and state
39 or local law enforcement or other personnel may not assist in, the
40 enforcement of any federal or other laws that are inconsistent with

1 this division, or provide for greater sanctions for conduct prohibited
2 by this division.

3 11729. This division may not be construed to affect or limit
4 any criminal statute that forbids impairment while engaging in
5 dangerous activities like driving, or that penalizes bringing
6 marijuana to a school enrolling pupils in kindergarten or any of
7 grades 1 to 12, inclusive.

8 11730. This division may not be construed to affect the rights
9 of employers concerning employees who use marijuana.

10 SEC. 22. *Section 118880 of the Health and Safety Code is*
11 *amended to read:*

12 118880. The Legislature finds and declares that tobacco *and*
13 *marijuana* smoke ~~is a hazard~~ *are hazards* to the health of the
14 general public.

15 SEC. 23. *Section 118885 of the Health and Safety Code is*
16 *amended to read:*

17 118885. Within indoor rooms, indoor chambers, or indoor
18 places of public assembly in publicly owned buildings in which
19 public business is conducted requiring or providing direct
20 participation or observation by the general public there shall be a
21 contiguous area of not less than 50 percent of the total area of the
22 room, chamber, or place designated and posted by signs of
23 sufficient number and posted in locations as to be readily seen by
24 persons within the area, where the smoking of tobacco ~~is or~~
25 *marijuana products* are prohibited while a public meeting is in
26 progress. A public body, commission, agency, or other entity
27 conducting a public meeting may waive the requirements of this
28 section with respect to its own members *who smoke tobacco*
29 *products*, provided that the rights of nonsmoking members are not
30 adversely affected.

31 SEC. 24. *Section 118890 of the Health and Safety Code is*
32 *amended to read:*

33 118890. Every health facility, as defined in Section 1250, and
34 clinic, as defined in Section 1200, shall comply with the following:

35 (a) Shall make every reasonable effort to assign patients to
36 rooms according to the patient's individual ~~nonsmoking or smoking~~
37 *preference for the smoking or nonsmoking of tobacco or marijuana*
38 *products*.

39 (b) Shall designate and post by signs of sufficient number and
40 posted in locations as to be readily seen by persons within the area,

1 a contiguous area of not less than 20 percent of every cafeteria or
2 other dining area whose occupied capacity is 50 or more persons
3 as a ~~nonsmoking~~ section *that prohibits the smoking of tobacco or*
4 *marijuana products.*

5 (c) This section shall not prevent any health facility or clinic
6 from *banning the smoking of tobacco or marijuana products* in
7 any area that it may designate and post by sign or in all areas of
8 the facility or clinic.

9 *SEC. 25. Section 118895 of the Health and Safety Code is*
10 *amended to read:*

11 118895. Within every publicly owned building open to the
12 general public for the primary purpose of exhibiting any motion
13 picture, stage drama, music recital, or any other performance, with
14 the exception of any indoor sporting event, signs shall be posted
15 in sufficient number and in locations as to be readily seen by
16 persons within the area, that shall designate that the smoking of
17 tobacco *and marijuana* is prohibited in any area other than that
18 commonly known as the lobby. This prohibition shall not apply
19 except during those times when the building is actually open to
20 the public.

21 *SEC. 26. Section 118900 of the Health and Safety Code is*
22 *amended to read:*

23 118900. Within every restaurant in a publicly owned building
24 serving food or alcoholic beverages in rooms whose occupied
25 capacity is 50 or more persons there shall be designated and posted
26 by signs of sufficient number and posted in locations as to be
27 readily seen by persons within the area, a contiguous area of not
28 less than 20 percent of the serving area where the smoking of
29 tobacco *or marijuana products* is prohibited.

30 (a) This section shall not apply to banquet rooms in use for
31 private functions.

32 (b) This section shall not apply to premises under lease as a
33 restaurant for the time as the lessee of record on January 1, 1977,
34 has a lease as the operator of the restaurant.

35 (c) As used in this section, "restaurant" means any place
36 designated as a restaurant by Section 28522.

37 *SEC. 27. Section 118905 of the Health and Safety Code is*
38 *amended to read:*

39 118905. Any person may apply for a writ of mandate to compel
40 compliance by any public entity that has not complied with the

1 requirements of this article and Article 3 (commencing with Section
2 118920) for the designating or posting of nonsmoking areas or
3 areas where the smoking of tobacco *or marijuana products* is
4 prohibited. If judgment is given for the applicant, he or she may
5 recover all reasonable costs of the suit, including reasonable
6 attorney fees, reasonableness to be determined by the court.

7 *SEC. 28. Section 118915 of the Health and Safety Code is*
8 *amended to read:*

9 118915. (a) Except as provided in subdivision (b), no person
10 shall smoke any tobacco *or marijuana* product in any retail food
11 production and marketing establishment, as defined in Section
12 28802, during the hours the establishment is open to the public.

13 (b) The provisions of subdivision (a) shall not apply to that
14 portion of an establishment subject to Section 118900 nor to an
15 area of an establishment set aside for employee smoking *of tobacco*
16 *products* and not open to the public.

17 *SEC. 29. Section 118925 of the Health and Safety Code is*
18 *amended to read:*

19 118925. It is unlawful for any person to smoke tobacco,
20 *marijuana*, or any other plant product in any vehicle of a passenger
21 stage corporation, the National Railroad Passenger Corporation
22 (Amtrak) except to the extent permitted by federal law, in any
23 aircraft except to the extent permitted by federal law, on a public
24 transportation system, as defined by Section 99211 of the Public
25 Utilities Code, or in any vehicle of an entity receiving any transit
26 assistance from the state.

27 *SEC. 30. Section 118935 of the Health and Safety Code is*
28 *amended to read:*

29 118935. (a) Every person and public agency providing
30 transportation services for compensation, including, but not limited
31 to, the National Railroad Passenger Corporation (Amtrak) to the
32 extent permitted by federal law, passenger stage corporations, and
33 local agencies that own or operate airports, shall designate and
34 post, by signs of sufficient number and posted in locations that
35 may be readily seen by persons within the area, a contiguous area
36 of not less than 75 percent of any area made available by the person
37 or public agency as a waiting room for these passengers where the
38 smoking of tobacco *or marijuana* is prohibited. Not more than 25
39 percent of any given area may be set aside for smokers *of tobacco*
40 *products*.

(b) Every person or public agency subject to subdivision (a) shall also post, by sign of sufficient number and posted in locations as to be readily seen by persons within the area of any building where tickets, tokens, or other evidences that a fare has been paid for transportation services that are provided by the person or public agency, a notice that the smoking of tobacco *or marijuana products* by persons waiting in line to purchase the tickets, tokens, or other evidences that a fare has been paid is prohibited.

(c) It is unlawful for any person to smoke *tobacco or marijuana products* in an area posted pursuant to this section.

SEC. 31. *Section 6404.5 of the Labor Code is amended to read:*

6404.5. (a) The Legislature finds and declares that regulation of smoking *of tobacco and marijuana products* in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco *and marijuana* products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco *and marijuana* products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco *or marijuana* smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a “place of employment” pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco *or marijuana* products in an enclosed space at a place of employment. “Enclosed space” includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building and not specifically defined in subdivision (d).

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally in violation of this section if he or she has taken the following reasonable steps to prevent smoking *of tobacco or marijuana products* by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating “No smoking *of tobacco or marijuana products*” shall be posted at each entrance to the building or structure.

(B) Where smoking *of tobacco products* is permitted in designated areas of the building or structure, a sign stating “Smoking *of tobacco products* is prohibited except in designated areas” shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking *tobacco or marijuana products* refrain from smoking in the enclosed workplace.

For purposes of this subdivision, “reasonable steps” does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, “place of employment” does not include any of the following:

(1) Sixty-five percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking *of tobacco products* by the establishment. An establishment may permit smoking *of tobacco products* in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, “lobby” means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment’s guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking *of tobacco products* is not permitted in a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking *of tobacco products* in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if ~~no nonsmoking~~ employees *smoking tobacco products* are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floorspace, and 20 or fewer full-time employees working at the facility, but does not include any area within a facility that is utilized as office space.

(7) Gaming clubs, in which smoking *of tobacco products* is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking *of tobacco products* is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises,

1 in which the serving of food is incidental. “Bar or tavern” includes
2 those facilities located within a hotel, motel, or other similar
3 transient occupancy establishment. However, when located within
4 a building in conjunction with another use, including a restaurant,
5 “bar” or “tavern” includes only those areas used primarily for the
6 sale and service of alcoholic beverages. “Bar” or “tavern” does
7 not include the dining areas of a restaurant, regardless of whether
8 alcoholic beverages are served therein.

9 (9) Theatrical production sites, if smoking *of tobacco or*
10 *marijuana products* is an integral part of the story in the theatrical
11 production.

12 (10) Medical research or treatment sites, if smoking *of tobacco*
13 *or marijuana products* is integral to the research and treatment
14 being conducted.

15 (11) Private residences, except for private residences licensed
16 as family day care homes, during the hours of operation as family
17 day care homes and in those areas where children are present.

18 (12) Patient smoking areas in long-term health care facilities,
19 as defined in Section 1418 of the Health and Safety Code.

20 (13) Breakrooms designated by employers for smoking *of*
21 *tobacco products*, provided that all of the following conditions are
22 met:

23 (A) Air from the smoking room shall be exhausted directly to
24 the outside by an exhaust fan. Air from the smoking room shall
25 not be recirculated to other parts of the building.

26 (B) The employer shall comply with any ventilation standard
27 or other standard utilizing appropriate technology, including, but
28 not limited to, mechanical, electronic, and biotechnical systems,
29 adopted by the Occupational Safety and Health Standards Board
30 or the federal Environmental Protection Agency. If both adopt
31 inconsistent standards, the ventilation standards of the Occupational
32 Safety and Health Standards Board shall be no less stringent than
33 the standards adopted by the federal Environmental Protection
34 Agency.

35 (C) The smoking room shall be located in a nonwork area where
36 no one, as part of his or her work responsibilities, is required to
37 enter. For purposes of this subparagraph, “work responsibilities”
38 does not include any custodial or maintenance work carried out in
39 the breakroom when it is unoccupied.

1 (D) There are sufficient nonsmoking breakrooms to
2 accommodate nonsmokers.

3 (14) Employers with a total of five or fewer employees, either
4 full time or part time, may permit smoking of *tobacco products*
5 where all of the following conditions are met:

6 (A) The smoking area is not accessible to minors.

7 (B) All employees who enter the smoking area consent to permit
8 smoking. No one, as part of his or her work responsibilities, shall
9 be required to work in an area where smoking is permitted. An
10 employer who is determined by the division to have used coercion
11 to obtain consent or who has required an employee to work in the
12 smoking area shall be subject to the penalty provisions of Section
13 6427.

14 (C) Air from the smoking area shall be exhausted directly to
15 the outside by an exhaust fan. Air from the smoking area shall not
16 be recirculated to other parts of the building.

17 (D) The employer shall comply with any ventilation standard
18 or other standard utilizing appropriate technology, including, but
19 not limited to, mechanical, electronic, and biotechnical systems,
20 adopted by the Occupational Safety and Health Standards Board
21 or the federal Environmental Protection Agency. If both adopt
22 inconsistent standards, the ventilation standards of the Occupational
23 Safety and Health Standards Board shall be no less stringent than
24 the standards adopted by the federal Environmental Protection
25 Agency.

26 This paragraph shall not be construed to (i) supersede or render
27 inapplicable any condition or limitation on smoking areas made
28 applicable to specific types of business establishments by any other
29 paragraph of this subdivision or (ii) apply in lieu of any otherwise
30 applicable paragraph of this subdivision that has become
31 inoperative.

32 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
33 construed to require employers to provide reasonable
34 accommodation to smokers of *tobacco products*, or to provide
35 breakrooms for smokers or nonsmokers of *tobacco products*.

36 (f) (1) Except as otherwise provided in this subdivision,
37 smoking of *tobacco products* may be permitted in gaming clubs,
38 as defined in paragraph (7) of subdivision (d), and in bars and
39 taverns, as defined in paragraph (8) of subdivision (d), until the
40 earlier of the following:

1 (A) January 1, 1998.

2 (B) The date of adoption of a regulation (i) by the Occupational
3 Safety and Health Standards Board reducing the permissible
4 employee exposure level to environmental tobacco smoke to a
5 level that will prevent anything other than insignificantly harmful
6 effects to exposed employees or (ii) by the federal Environmental
7 Protection Agency establishing a standard for reduction of
8 permissible exposure to environmental tobacco smoke to an
9 exposure level that will prevent anything other than insignificantly
10 harmful effects to exposed persons.

11 (2) If a regulation specified in subparagraph (B) of paragraph
12 (1) is adopted on or before January 1, 1998, smoking *of tobacco*
13 *products* may thereafter be permitted in gaming clubs and in bars
14 and taverns, subject to full compliance with, or conformity to, the
15 standard in the regulation within two years following the date of
16 adoption of the regulation. An employer failing to achieve
17 compliance with, or conformity to, the regulation within this
18 two-year period shall prohibit smoking *of tobacco products* in the
19 gaming club, bar, or tavern until compliance or conformity is
20 achieved. If the Occupational Safety and Health Standards Board
21 and the federal Environmental Protection Agency both adopt
22 regulations specified in subparagraph (B) of paragraph (1) that are
23 inconsistent, the regulations of the Occupational Safety and Health
24 Standards Board shall be no less stringent than the regulations of
25 the federal Environmental Protection Agency.

26 (3) If a regulation specified in subparagraph (B) of paragraph
27 (1) is not adopted on or before January 1, 1998, the exemptions
28 specified in paragraphs (7) and (8) of subdivision (d) shall become
29 inoperative on and after January 1, 1998, until a regulation is
30 adopted. Upon adoption of such a regulation on or after January
31 1, 1998, smoking *of tobacco products* may thereafter be permitted
32 in gaming clubs and in bars and taverns, subject to full compliance
33 with, or conformity to, the standard in the regulation within two
34 years following the date of adoption of the regulation. An employer
35 failing to achieve compliance with, or conformity to, the regulation
36 within this two-year period shall prohibit smoking *of tobacco*
37 *products* in the gaming club, bar, or tavern until compliance or
38 conformity is achieved. If the Occupational Safety and Health
39 Standards Board and the federal Environmental Protection Agency
40 both adopt regulations specified in subparagraph (B) of paragraph

1 (1) that are inconsistent, the regulations of the Occupational Safety
2 and Health Standards Board shall be no less stringent than the
3 regulations of the federal Environmental Protection Agency.

4 (4) From January 1, 1997, to December 31, 1997, inclusive,
5 smoking *of tobacco products* may be permitted in gaming clubs,
6 as defined in paragraph (7) of subdivision (d), and in bars and
7 taverns, as defined in paragraph (8) of subdivision (d), subject to
8 both of the following conditions:

9 (A) If practicable, the gaming club or bar or tavern shall
10 establish a designated nonsmoking area.

11 (B) If feasible, no employee shall be required, in the
12 performance of ordinary work responsibilities, to enter any area
13 in which smoking *of tobacco products* is permitted.

14 (g) The smoking prohibition *of tobacco or marijuana products*
15 set forth in this section shall constitute a uniform statewide standard
16 for regulating the smoking of tobacco *or marijuana* products in
17 enclosed places of employment and shall supersede and render
18 unnecessary the local enactment or enforcement of local ordinances
19 regulating the smoking of tobacco *or marijuana* products in
20 enclosed places of employment. Insofar as the smoking prohibition
21 set forth in this section is applicable to all (100-percent) places of
22 employment within this state and, therefore, provides the maximum
23 degree of coverage, the practical effect of this section is to
24 eliminate the need of local governments to enact enclosed
25 workplace smoking restrictions within their respective jurisdictions.

26 (h) Nothing in this section shall prohibit an employer from
27 prohibiting smoking in an enclosed place of employment for any
28 reason.

29 (i) The enactment of local regulation of smoking of tobacco
30 products in enclosed places of employment by local governments
31 shall be suspended only for as long as, and to the extent that, the
32 (100-percent) smoking prohibition provided for in this section
33 remains in effect. In the event this section is repealed or modified
34 by subsequent legislative or judicial action so that the (100-percent)
35 smoking prohibition is no longer applicable to all enclosed places
36 of employment in California, local governments shall have the full
37 right and authority to enforce previously enacted, and to enact and
38 enforce new, restrictions on the smoking of tobacco products in
39 enclosed places of employment within their jurisdictions, including
40 a complete prohibition of smoking. Notwithstanding any other

1 provision of this section, any area not defined as a “place of
2 employment” or in which smoking is not regulated pursuant to
3 subdivision (d) or (e), shall be subject to local regulation of
4 smoking of tobacco products.

5 (j) Any violation of the prohibition set forth in subdivision (b)
6 is an infraction, punishable by a fine not to exceed one hundred
7 dollars (\$100) for a first violation, two hundred dollars (\$200) for
8 a second violation within one year, and five hundred dollars (\$500)
9 for a third and for each subsequent violation within one year. This
10 subdivision shall be enforced by local law enforcement agencies,
11 including, but not limited to, local health departments, as
12 determined by the local governing body.

13 (k) Notwithstanding Section 6309, the division shall not be
14 required to respond to any complaint regarding the smoking of
15 tobacco *or marijuana* products in an enclosed space at a place of
16 employment, unless the employer has been found guilty pursuant
17 to subdivision (j) of a third violation of subdivision (b) within the
18 previous year.

19 (l) If any provision of this act or the application thereof to any
20 person or circumstances is held invalid, that invalidity shall not
21 affect other provisions or applications of the act that can be given
22 effect without the invalid provision or application, and to this end
23 the provisions of this act are severable.

24 *SEC. 32. Section 561 of the Public Utilities Code is amended*
25 *to read:*

26 561. (a) Every railroad corporation, passenger stage
27 corporation, passenger air carrier, and street railroad corporation
28 providing departures originating in this state shall prohibit the
29 smoking of any tobacco *or marijuana* product in the passenger
30 seating area of every passenger car, passenger stage, aircraft, or
31 other vehicle.

32 (b) Every such corporation and carrier shall display in the
33 passenger seating area of every passenger car, passenger stage,
34 aircraft, or other vehicle, notices sufficient in number, posted in
35 such locations as to be readily seen by boarding passengers,
36 advising passengers of the no smoking requirements pursuant to
37 subdivision (a). Words on such notices which state “No Smoking”
38 or an equivalent phrase shall be at least three-quarters of one inch
39 high, and any other explanatory words on the notices shall be at
40 least one-quarter of an inch high.

1 (c) No person shall smoke any tobacco *or marijuana* product
2 in a space known by him or her to be designated for nonsmoking
3 passengers. A violation of this subdivision is not a crime.

4 (d) As used in this section, “passenger air carrier” shall have
5 the same meaning as provided in Sections 2741 and 2743.

6 ~~SEC. 22.~~

7 SEC. 33. Part 14.6 (commencing with Section 34001) is added
8 to Division 2 of the Revenue and Taxation Code, to read:

9
10 PART 14.6. MARIJUANA FEES

11
12 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

13
14 34001. It is the intent of the people in enacting this part to
15 discourage drug use and to raise revenue for drug education and
16 drug awareness programs by enacting a supplemental fee on
17 marijuana.

18 34002. This part shall be known and may be cited as the
19 “Marijuana Supplemental Fee Law.”

20 34003. Except where the context otherwise requires, the
21 definitions set forth in Part 1 (commencing with Section 6001)
22 govern the construction of this part.

23 34004. For purposes of this part:

24 (a) “Marijuana” includes all marijuana, concentrated cannabis,
25 and their derivatives, except that marijuana containing less than
26 one-half of 1 percent tetrahydrocannabinol by weight is not subject
27 to this supplemental fee. However, no fee shall be imposed under
28 this part on marijuana used medicinally with a doctor’s
29 recommendation as specified in Section 11362.5 of the Health and
30 Safety Code.

31 (b) “Retailer” means any retailer licensed pursuant to Section
32 23394.1 of the Business and Professions Code who sells marijuana
33 at retail.

34
35 CHAPTER 2. IMPOSITION OF FEE

36
37 34011. Until a different fee is determined pursuant to Section
38 34032 there is hereby imposed a fee of fifty dollars (\$50) per ounce
39 (avoirdupois) for the sale of marijuana sold at retail in this state

1 on or after the date determined by Section 25406 of the Business
2 and Professions Code.

3
4 CHAPTER 3. COLLECTION AND ADMINISTRATION
5

6 34021. To the extent feasible or practicable, the provisions of
7 Chapter 5 (commencing with Section 6451), Chapter 6
8 (commencing with Section 6701), Chapter 7 (commencing with
9 Section 6901), and Chapter 8 (commencing with Section 7051) of
10 Part 1 shall govern returns and payments, determinations,
11 collections of fees, overpayments and refunds, and administration
12 under this part.

13 34022. The board shall enforce this part and may prescribe,
14 adopt, and enforce rules and regulations relating to the
15 administration and enforcement of this part. The board may
16 prescribe the extent to which any ruling and regulation shall be
17 applied without retroactive effect.
18

19 CHAPTER 4.

20 DISPOSITION OF PROCEEDS AND ADJUSTMENT OF THE FEE
21

22 34031. Any amount required to be paid to the state under this
23 part shall be paid to the board in the form of a remittance payable
24 to the State Board of Equalization. The board shall transmit the
25 payments to the Treasurer to be deposited in the Drug Abuse
26 Prevention Supplemental Funding Account, which is hereby created
27 in the General Fund. Upon appropriation by the Legislature, the
28 moneys in the fund shall be expended exclusively for drug
29 education, awareness, and rehabilitation programs under the
30 jurisdiction of the Department of Alcohol and Drug Programs, or
31 any successor to that agency.

32 34032. The fee imposed pursuant to Chapter 2 shall be annually
33 reviewed by the Department of Alcohol and Drug Programs, or
34 any successor to that agency, to determine whether a fee less than
35 that specified in Chapter 2 will provide sufficient resources to
36 support its drug education, awareness, and rehabilitation programs.
37 Based on this annual review, the Department of Alcohol and Drug
38 Programs shall adjust that fee to an amount not to exceed fifty
39 dollars (\$50) per ounce (avoirdupois) of marijuana that is necessary
40 to fund its drug education, awareness, and rehabilitation programs,

1 and that amount shall be collected in place of the fee specified in
2 Chapter 2.

3 ~~SEC. 23.~~

4 *SEC. 34.* Section 23222 of the Vehicle Code is amended to
5 read:

6 23222. No person shall have in his or her possession on his or
7 her person, while driving a motor vehicle upon a highway or on
8 lands, as described in subdivision (b) of Section 23220, any ~~bottle,~~
9 ~~can, or other receptacle, containing any alcoholic beverage~~
10 *receptacle containing any alcoholic or marijuana product* which
11 has been opened, or a seal broken, or the contents of which have
12 been partially removed.

13 ~~SEC. 24.~~

14 *SEC. 35.* Section 40000.15 of the Vehicle Code is amended to
15 read:

16 40000.15. A violation of any of the following provisions shall
17 constitute a misdemeanor, and not an infraction:

18 Subdivision (g), (j), (k), (l), or (m) of Section 22658, relating to
19 unlawfully towed or stored vehicles.

20 Sections 23103 and 23104, relating to reckless driving.

21 Section 23109, relating to speed contests or exhibitions.

22 Subdivision (a) of Section 23110, relating to throwing at vehicles.

23 Section 23152, relating to driving under the influence.

24 Subdivision (a) or (b) of Section 23224, relating to persons under
25 21 years of age knowingly driving, or being a passenger in, a motor
26 vehicle carrying any alcoholic beverage.

27 Section 23253, relating to directions on toll highways or
28 vehicular crossings.

29 Section 23332, relating to trespassing.

30 Section 24002.5, relating to unlawful operation of a farm vehicle.

31 Section 24011.3, relating to vehicle bumper strength notices.

32 Section 27150.1, relating to sale of exhaust systems.

33 Section 27362, relating to child passenger seat restraints.

34 Section 28050, relating to true mileage driven.

35 Section 28050.5, relating to nonfunctional odometers.

36 Section 28051, relating to resetting odometers.

37 Section 28051.5, relating to devices to reset odometers.

38 Subdivision (d) of Section 28150, relating to possessing four or
39 more jamming devices.

1 *SEC. 36. Section 4138 of the Welfare and Institutions Code is*
2 *amended to read:*

3 4138. (a) Upon receiving a request from the director of a state
4 hospital listed in Section 4100, the Director of Mental Health may
5 prohibit the possession or use of tobacco *or marijuana* products
6 on the grounds of the requesting facility. The Director of Mental
7 Health shall provide an implementation plan that shall include a
8 phase-in period for any of the state hospitals listed in Section 4100
9 that prohibits the possession or use of tobacco *or marijuana*
10 products by patients or any other persons on hospital grounds,
11 except on the premises of residential staff housing where patients
12 are not present.

13 (b) This prohibition shall include an exemption for
14 departmentally approved religious ceremonies.

15 (c) As part of the implementation plan, the department shall
16 provide any requesting patient with a smoking cessation plan that
17 may include, at minimum, an individual medical treatment plan,
18 counseling, prescription drugs, or nicotine replacement, as
19 determined to be medically necessary and appropriate.

20 (d) Nothing in this section shall be construed to restrict the
21 outside activity time currently available to hospital patients.

22 (e) If an implementation plan is adopted pursuant to subdivision
23 (a), the store or canteen at any facility subject to the prohibition
24 shall not sell tobacco *or marijuana* products.

25 ~~SEC. 25.~~

26 *SEC. 37. Section 18901.3 of the Welfare and Institutions Code*
27 *is amended to read:*

28 18901.3. (a) Subject to the limitations of subdivision (b),
29 pursuant to Section 115(d)(1)(A) of Public Law 104-193 (21 U.S.C.
30 Sec. 862a(d)(1)(A)), California opts out of the provisions of Section
31 115(a)(2) of Public Law 104-193 (21 U.S.C. Sec. 862a(a)(2)). A
32 convicted drug felon shall be eligible to receive food stamps under
33 this section.

34 (b) Subdivision (a) does not apply to a person who has been
35 convicted of unlawfully transporting, importing into this state,
36 selling, furnishing, administering, giving away, possessing for
37 sale, purchasing for purposes of sale, manufacturing a controlled
38 substance, possessing precursors with the intent to manufacture a
39 controlled substance.

1 (c) Subdivision (a) does not apply to a person who has been
2 convicted of unlawfully soliciting, inducing, encouraging, or
3 intimidating a minor to participate in any activity listed in
4 subdivision (b).

5 (d) As a condition of eligibility to receive food stamps pursuant
6 to subdivision (a), an applicant convicted of a felony drug offense
7 that is not excluded under subdivision (b) or (c) shall be required
8 to provide proof of one of the following subsequent to the most
9 recent drug-related conviction:

10 (1) Completion of a government-recognized drug treatment
11 program.

12 (2) Participation in a government-recognized drug treatment
13 program.

14 (3) Enrollment in a government-recognized drug treatment
15 program.

16 (4) Placement on a waiting list for a government-recognized
17 drug treatment program.

18 (5) Other evidence that the illegal use of controlled substances
19 has ceased, as established by State Department of Social Services
20 regulations.

21 (e) Notwithstanding the Administrative Procedure Act (Chapter
22 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
23 Title 2 of the Government Code), the department may implement
24 this section through an all-county letter or similar instructions from
25 the director no later than January 1, 2005.

26 (f) The department shall adopt regulations as otherwise
27 necessary to implement this section no later than July 1, 2005.
28 Emergency regulations adopted for implementation of this section
29 may be adopted by the director in accordance with the
30 Administrative Procedure Act. The adoption of emergency
31 regulations shall be deemed to be an emergency and necessary for
32 immediate preservation of the public peace, health and safety, or
33 general welfare. The emergency regulations shall be exempt from
34 review by the Office of Administrative Law. The emergency
35 regulations authorized by this section shall be submitted to the
36 Office of Administrative Law for filing with the Secretary of State
37 and shall remain in effect for no more than 180 days.

38 ~~SEC. 26.~~

39 *SEC. 38.* The provisions of this act are severable. If any
40 provision of this act or its application is held invalid, that invalidity

1 shall not affect other provisions or applications that can be given
2 effect without the invalid provision or application.

3 ~~SEC. 27.~~

4 *SEC. 39.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.